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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 175

PARTMAR CORPORATION,

Appellant,

vs.

THE UNITED STATES OF AMERICA, PARAMOUNT PICTURES, INC., ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

STATEMENT OF PARAMOUNT PICTURES, INC., ET AL., OPPOSING JURISDICTION AND MOTION TO DISMISS.

ALBERT C. BICKFORD,
Counsel for Appellee.

LOUIS PHILLIPS,
GEORGE G. GALLANTZ,
Of Counsel.

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INDEX

Subject Index

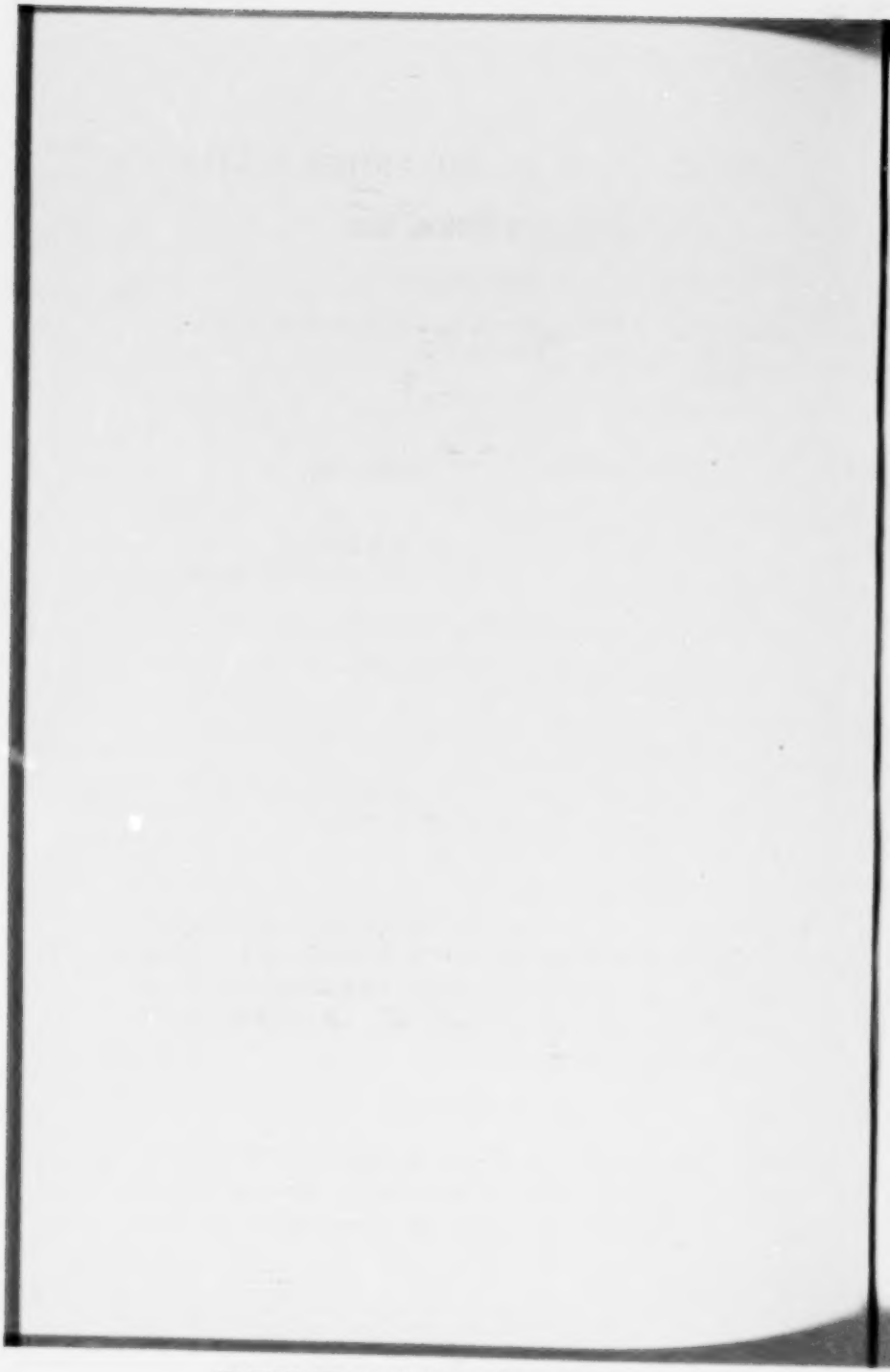
	Page
Statement opposing jurisdiction and motion to dismiss	1
Facts	2
No appeal lies from the denial of the appellant's motion for leave to intervene. The questions presented are not substantial	6

Table of Cases Cited

Allen Co. v. *Cash Register Co.*, 322 U. S. 137	6
City of New York v. *Consolidated Gas Co.*, 253 U. S. 219	7
Credits Commutation Co. v. *United States*, 177 U. S. 311	7
Cutting, In re, 94 U. S. 15	7
Engelhard, In re, 231 U. S. 646	7
Jewel Incandescent Lamp Co., Inc., v. *General Electric Co.*, 318 U. S. 746	6
Leaf Tobacco Board of Trade, Ex parte, 222 U. S. 578	7
Missouri-Kansas Pipe Line Co. v. *United States*, 312 U. S. 502	7
New York v. *New York Telephone Co.*, 261 U. S. 312	7
St. Louis Amusement Co. v. *United States*, 326 U. S. 680	6
United States v. *California Canneries*, 279 U. S. 553	6
United States v. *Paramount Pictures, Inc., et al.*, 334 U. S. 131	2, 3, 6

Statutes Cited

Sherman Act (26 Stat. 209, as amended, 50 Stat. 693, 15 U.S.C. SS 1, 2)	3



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 175

PARTMAR CORPORATION,

Appellant,

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PARAMOUNT PICTURES, INC., ET AL.,

Defendants.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

STATEMENT, PURSUANT TO RULE 12, PARAGRAPH 3, OF THE RULES OF THIS COURT, BY PARAMOUNT PICTURES INC. AND PARAMOUNT FILM DISTRIBUTING CORPORATION, IN OPPOSITION TO JURISDICTION.

Paramount Pictures, Inc., and Paramount Film Distributing Corporation, pursuant to Rule 12, paragraph 3, of the Rules of this Court, submit the following statement of

the matters and grounds which make against the jurisdiction of this Court asserted by the appellant:

Facts

The appellant, Partmar Corporation, was until April 4, 1947, the lessee of a motion picture theatre, known as the Paramount Theatre, located in Los Angeles, California. This theatre was, and still is, owned by Paramount Pictures Theatres Corporation, a wholly owned subsidiary of Paramount Pictures Inc., one of the appellees herein. Appellant Partmar is also party to a franchise agreement with Paramount Pictures Inc., whereby Partmar has agreed to exhibit, for an extended period, the pictures produced by Paramount. The lease of the theatre contained a provision that, upon cancellation or termination of the franchise agreement for any reason whatsoever, the landlord could at its option declare the lease terminated. On December 31, 1946, the franchise agreement was outlawed by the District Court decree in *United States* v. *Paramount Pictures, Inc., et al.*, and, pursuant to the option contained in the lease, Paramount Pictures Treatres Corporation, on April 2, 1947, declared the lease terminated as of April 5, 1947, and notified the appellant to that effect. Upon the refusal of the appellant to vacate the theatre, Paramount Pictures Theatres Corporation in May, 1947, brought an action in the United States District Court for the Southern District of California, against the appellant herein and another, to recover possession of the premises and for other related relief. The appellant answered and, among other things, denied the plaintiff's right to declare the lease terminated and denied that the plaintiff was entitled to possesson of the theatre. The action is now at issue. Pending its determination, the appellant remains in possession of the theatre.

On May 3, 1948, this Court decided *United States* v. *Para-*

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mount Pictures Inc., et al., 334 U. S.131. It was there decided that the appellees herein had violated the Sherman Act (26 Stat. 209, as amended, 50 Stat. 693, 15 U. S. C. §§ 1, 2) in a number of respects. On the question of the relief to be decreed, this Court affirmed in part and reversed in part the judgment of the three-judge District Court for the Southern District of New York, and remanded the cases to that court for proceedings in conformity with this Court's opinion.

During the proceedings before the District Court on this Court's remand, the Government and Paramount undertook negotiations looking toward the entry of a consent judgment which would settle the remaining issues as between them. After lengthy and complicated negotiations, an agreement was reached and a proposed consent judgment was prepared for submission to the District Court. This is the judgment which the District Court signed on March 3, 1949. It contains provisions embodying all those provisions of the original decree which had been affirmed by this Court.

In addition, it requires Paramount to terminate joint ownerships in all but nine theatres, those nine being theatres in which the other joint owners were solely investors and not potential competitors. On the question of divestiture, the judgment requires Paramount to divest itself of all its interest in some 774 theatres (all specifically named or identifiable from the language in the judgment) and requires that Paramount's theatres be divorced from its production and distribution facilities. The latter requirement is to be effected by the dissolution of Paramount Pictures Inc. and by the creation of two new corporations, one of which will take over all Paramount's remaining theatres in the United States and the other of which will acquire Paramount's other assets.

Nothing in the judgment disposes of, or purports to dispose of, the Paramount theatre in Los Angeles, California, and nothing in the judgment purports to adjudicate the rights of Paramount or of appellant to the possession of the theatre. Appellant's right, if any, to continue in possession of the theatre remains subject to the determination of the lawsuit now pending in the California District Court. The jurisdiction of that court to decide that lawsuit has never been questioned and, in fact, there are now pending cross-motions by both parties for summary judgment and these are scheduled to be argued on May 5, 1949. Nevertheless, the appellant sought leave below to intervene in this action, viz., *United States* v. *Paramount Pictures Inc., et al.*, "upon the ground that representation of the applicant's interest by the existing parties may be inadequate and the applicant may be bound by the judgment, and upon the ground that the applicant will be adversely affected by a distribution of property which is subject to the control and disposition of this Court."

Lengthy argument was heard in support of the applicant's motion. In the course of its argument, the appellant did not attack the jurisdiction of the District Court to enter the consent judgment. Instead, it asked that the judgment about to be entered, be modified in certain specified particulars apparently designed to aid the appellant in the litigation now pending in the California District Court. This argument, of course, ignored the fact that the proposed decree was the product of agreement between the Government and the Paramount defendants, and erroneously assumed that this agreement could be modified at the instance of an intervenor. At the conclusion of the argument, the court orally announced: "With respect to these motions to intervene, they are denied, after giving the applicants as

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much opportunity to argue as though they had really been intervenors."

The judgment, in the form consented to by the Government and the Paramount defendants, was then signed and entered by the court. It contained a provision that the judgment was to be of no force or effect unless the proposed reorganization was approved by Paramount's stockholders prior to April 19, 1949. Pursuant to that provision Paramount prepared a plan or reorganization designed to carry out the terms of the judgment and submitted the plan to its stockholders. That procedure necessitated extensive effort and expense, including the preparation of literature to be sent to all stockholders, the submission of such literature to the Securities and Exchange Commission for its approval, and the circulation of the literature to over 34,000 stockholders preparatory to a special stockholders' meeting scheduled to take place on April 12, 1949. That meeting has since been held and, on that date, holders of 78.2% of the outstanding stock of Paramount Pictures, Inc. approved the plan of reorganization. Holders of only 1.15% of the outstanding stock cast votes in opposition.

Although in form this appeal seeks a review only of the action of the lower court, in practical effect the appellant would have this Court add new terms to an agreement between the Government and the Paramount defendants after the details of that agreement have been passed upon and approved by an overwhelming majority of the corporation's stockholders.

No Appeal Lies from the Denial of the Appellant's Motion for Leave to Intervene. The Questions Presented Are Not Substantial.

The present appeal is in all respect similar to an appeal taken from the denial of a previous application for leave to intervene in this same case. It will be recalled that prior to the contested decree which was reviewed by this Court in *United States* v. *Paramount Pictures Inc., et al.*, 334 U. S. 131, the parties had consented to a decree which contained provision for the arbitration of disputes arising in the motion picture industry (see 334 U. S. at p. 176). In *St. Louis Amusement Co.* v. *United States*, 326 U. S. 680, the appellants had sought leave to intervene in the District Court, asserting that they were aggrieved by the operation of the arbitration system. The relief they sought was, among other things, that the consent decree be vacated in so far as it had created the arbitration system. Leave to intervene was denied and an appeal to this Court was docketed. This Court dismissed the appeal for want of jurisdiction, citing *United States* v. *California Canneries*, 279 U. S. 553, 556 and cases cited: *Allen Co.* v. *Cash Register Co.*, 322 U. S. 137, 142.

To the same effect, see *Jewel Incandescent Lamp Co., Inc.* v. *General Electric Co.*, 318 U. S. 746.

In the *California Canneries* case, *supra*, Armour & Co. had entered into a contract whereby it had agreed to buy from California Canneries large quantities of canned fruit. Subsequently it consented to an anti-trust decree prohibiting it from engaging in the business of selling canned fruit. Canneries moved for leave to intervene, alleging its contract, and asked that the consent decree be vacated. The Supreme Court of the District of Columbia denied the motion but the Court of Appeals reversed and granted leave to intervene.

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This Court reversed and, in the course of its opinion, criticized the Court of Appeals for having ignored "the decisions which hold that an order denying leave to intervene is not appealable, *In re Cutting*, 94 U. S. 15; *Credits Commutation Co.* v. *United States*, 177 U. S. 311; *Ex parte Leaf Tobacco Board of Trade*, 222 U. S. 578, 581; *In re Engelhard*, 231 U. S. 646; *City of New York* v. *Consolidated Gas Co.*, 253 U. S. 219; *New York* v. *New York Telephone Co.*, 261 U. S. 312."

In the *Allen Co.* case, *supra*, National Cash Register Company had been restrained, pursuant to an anti-trust decree, from acquiring control of competitors. Years later, it moved in the District Court for an order permitting it to acquire stock of a competitor. Allen Co. moved for leave to intervene and the District Court denied the motion. On the appeal to this Court, the provisions of Rule 24 of the Rules of Civil Procedure were analyzed and it was held that the appellant could not have intervened as of right. *Missouri-Kansas Pipe Line Co.* v. *United States*, 312 U. S. 502, which is relied upon by the appellant here to sustain jurisdiction, was cited and distinguished upon the ground that, there, the appellant's right to intervene had been preserved in the original decree.

With respect to the exercise of the District Judge's discretion in denying leave to intervene, this Court held that the order was "but an order in the cause and not the final judgment. • • • It was, *inter alia*, to prevent the delay of unwarranted appeals by disappointed applicants to intervene, which would suspend the ultimate disposition of suits under the anti-trust acts, that jurisdiction to review District Court decrees was not vested in the Circuit Court of Appeals but solely in this Court, and that the statute limited the right of appeal to final decrees".

The authority of the *St. Louis Amusement Co.* case, *supra*, and of the cases there relied upon by the Court, thus clearly requires that the instant appeal be dismissed upon the grounds that the District Court's order denying the appellant's motion for leave to intervene was not final and that no substantial question is presented requiring review by this Court.

WHEREFORE, the appellees Paramount Pictures Inc. and Paramount Film Distributing Corporation respectfully ask that the appeal herein be dismissed.

April 15, 1949.

Respectfully submitted,

ALBERT C. BICKFORD,
Counsel for Appellees,
Paramount Pictures Inc., and
Paramount Film Distributing
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